

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3
4 Michael V. Lujan,

Case No. 2:21-cv-01623-JAD-DJA

5 Plaintiff

6 v.

7 Charles Daniels, et. al.,

**Order Dismissing
and Closing Case**

8 Defendants

ECF No. 4

9 Plaintiff Michael V. Lujan brings this civil-rights lawsuit to redress constitutional
10 violations that he claims he suffered while incarcerated at Southern Desert Correctional Center.
11 On September 3, 2022, this court ordered the plaintiff to either pay the \$402 filing fee or file a
12 complete application to proceed *in forma pauperis* by November 2, 2021.¹ That deadline
13 expired, and Lujan did not pay the fee or file a complete application to proceed *in forma*
14 *pauperis*. Because Lujan submitted an incomplete application to proceed *in forma pauperis* on
15 September 27, 2022,² the court considered meaningful alternatives to dismissal and issued
16 another order on January 19, 2022, granting him one final opportunity to submit a complete
17 application to proceed *in forma pauperis* that included a fully signed financial certificate (page 4
18 of this court's application) and an inmate account statement for the previous six-month period by
19 February 18, 2022.³ That deadline expired and Lujan still has not filed a fully complete

20
21
22 _____
¹ ECF No. 3.

23 _____
² ECF No. 4.

³ ECF No. 10.

1 application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to
2 the court's January 19, 2022, order.

3 District courts have the inherent power to control their dockets and “[i]n the exercise of
4 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
5 court may dismiss an action based on a party's failure to obey a court order or comply with local
6 rules.⁵ In determining whether to dismiss an action on this ground, the court must consider: (1)
7 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
8 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
9 cases on their merits; and (5) the availability of less drastic alternatives.⁶

10 The first two factors, the public's interest in expeditiously resolving this litigation and the
11 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
12 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
13 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
14 action.⁷ The fourth factor—the public policy favoring disposition of cases on their merits—is
15 greatly outweighed by the factors favoring dismissal.

16 The fifth factor requires the court to consider whether less drastic alternatives can be used
17 to correct the party's failure that brought about the court's need to consider dismissal.⁸ Courts

18 ⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

19 ⁵ *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
20 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
for lack of prosecution and failure to comply with local rules).

21 ⁶ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
22 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 ⁸ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
accord Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the


1 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 2 explore possible and meaningful alternatives.”⁹ Because this court cannot operate without
 3 collecting reasonable fees, and litigation cannot progress without a plaintiff’s compliance with
 4 court orders, the only alternative is to enter a third order setting another deadline. But issuing a
 5 third order will only delay the inevitable and further squander the court’s finite resources.
 6 Setting another deadline is not a meaningful alternative given these circumstances. So the fifth
 7 factor favors dismissal.

8 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
 9 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without
 10 prejudice based on Lujan’s failure to pay the filing fee or seek to proceed *in forma pauperis* in
 11 compliance with the court’s September 3, 2021, and January 19, 2022, orders.

12 IT IS FURTHER ORDERED that pending motion [ECF No. 4] IS DENIED.

13 IT IS FURTHER ORDERED that the Clerk of Court is directed to **ENTER**
 14 **JUDGMENT** accordingly and **CLOSE THIS CASE**. If Michael V. Lujan wishes to pursue his
 15 claims, he must file a complaint in a new case, and he must pay the fee for that action or file a
 16 complete application to proceed *in forma pauperis*.

17 Dated: March 23, 2022

18 
 19 U.S. District Judge Jennifer A. Dorsey
 20
 21

22 _____
 23 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic
 alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[.]” have been “eroded” by *Yourish*).

⁹ *Henderson*, 779 F.2d at 1424.